Nurses' Association has prepared two folders, called "Wanted, a Real Nurse, an R. N." and "Safe Nursing Care and Where to Ask for It." Copies of them are enclosed. They discuss briefly the significance of the term "Registered Nurse" and suggest how to secure the type of nursing service which may be needed.

Physicians may secure copies of the folders from the Nursing Information Bureau, 50 West Fiftieth Street, New York City. We would be glad to have you advise them of this offer through your magazine.

Sincerely yours,

MARY M. ROBERTS,
Director, Nursing Information Bureau.

Subject: Letter of appreciation for health lectures.

THE YOUNG WOMEN'S CHRISTIAN ASSOCIATION
SAN FRANCISCO

October 17, 1938.

George H. Kress, M. D.,
Secretary, California Medical Association.

My dear Doctor Kress:

I wish to express our appreciation for your coöperation in setting up our series of health lectures for this fall. The list of speakers and their subjects is very satisfactory. It is always amazing to me that such busy and important doctors can give their time to help us with our community health education projects.

We do want to thank you for arranging it for us. If at any time we can aid you in any way, please know we will be only too happy to do so.

620 Sutter Street.

Sincerely yours,

DORIS MCFARLAND,
Associate Director, Health and Recreation Department.

* * *

The subjects and names of speakers follow:

October 13—Cosmetic and Facial Blemishes, Laurence Taussig.

October 20—Eyes, George N. Hosford.

October 27—Medical Examinations, Donald Carson.

November 3—Menstruation and Its Disorders, Harold G. Watson.

November 10—Cancer, Ludwig Emge.

November 17—Venereal Diseases, E. K. Stratton.

Subject: Legal status of physicians under the Workmen's Compensation Act of California.*

San Francisco, October 18, 1938.

George H. Kress, M. D.,
Secretary, California Medical Association,
450 Sutter Street,
San Francisco, California.

Re: Pacific Employers' Insurance Company vs. Industrial Accident Commission and Kenneth Tator.

Dear Doctor:

The above-entitled action, which was decided several months ago by the California Supreme Court in favor of the injured employee, Tator, and Drs. J. Scott Quigley, Ergo A. Majors, and N. Austin Cary, and against the Compensation Insurance Company involved, has been appealed to the United States Supreme Court. Yesterday, October 17, the Supreme Court of the United States granted a writ of certiorari, which means that it will hear the case later this fall.

I am this day informing the doctors concerned regarding the action of the United States Supreme Court.

111 Sutter Street.

Very truly yours,

HARTLEY F. PEART.

* Under this caption this subject was discussed in the Medical Jurisprudence department of CALIFORNIA AND WESTERN MEDICINE, in its issue of March, 1938, on pages 215 and 216.

MEDICAL JURISPRUDENCE †

By HARTLEY F. PEART, ESQ.
San Francisco

Corporate Practice of Medicine: A Discussion of the Recent Decision of the California Supreme Court Denying to Capital Stock Corporations the Right to Control or Select Physicians

In December, 1935, the District Court of Appeal for the First Appellate District, decided in *Pacific Employers Ins. Co.* vs. *Carpenter,* 10 Cal. App. (2d) 592, that an insurance company could not lawfully issue a medical and surgical insurance policy under the terms of which the insurance company would furnish to its policyholders medical and surgical services through certain designated physicians. The District Court of Appeal held that neither a corporation nor any other unlicensed person may engage directly or indirectly in the practice of medicine and from this premise reasoned that it was likewise contrary to the law for an insurance company to undertake to furnish to its policyholders the professional services of physicians and surgeons designated, selected or employed by it.

A few months later the District Court of Appeal for the second Appellate District, in *Benjamin Franklin Life Assurance Co.* vs. *Mitchell,* 14 Cal. App. (2d) 654, also held that an insurance company could not lawfully issue a policy of insurance under which medical services would be rendered to policyholders through physicians in effect selected by the company. In this case the insurance policy proposed to be issued apparently provided for freedom of choice of physician by the policyholder, but at the same time policyholders were *required* to execute a proxy to a committee of company officers under the terms of which the committee selected the physician to render services.

After the foregoing decisions of the District Court of Appeal, it was generally considered by legal writers (Notes, 25 Cal. Law Rev. 91; 10 So. Cal. Law Rev. 329; 30 Ill. Law Rev. 533), that in California, at least, it was firmly settled that a private corporation could not engage in the practice of medicine. It was further generally assumed that it was also the law that a corporation or any other unlicensed person which attempted to designate or select a physician and surgeon to whom patients must go in order to receive the benefits of a contract, was in effect practicing medicine and surgery in violation of the rule forbidding corporate practice.

However, at least one corporation organized for profit and engaging in the *business* of selling membership certificates entitling the holder to medical and surgical services only from physicians selected by the corporation, evidently felt that the last judicial word had not been said on the subject. The corporation mentioned, *i. e.,* Pacific Health Corporation, continued to issue membership certificates and to furnish medical services through designated or selected physicians. Thereupon, the Attorney-General's office, acting on the relation of the Board of Medical Examiners,

† Editor's Note.—This department of CALIFORNIA AND WESTERN MEDICINE, presenting copy submitted by Hartley F. Peart, Esq., will contain excerpts from and syllabi of recent decisions and analyses of legal points and procedures of interest to the profession.

commenced an action against the Pacific Health Corporation, seeking an order of court restricting Pacific Health Corporation's corporate powers so that selection of physicians by it would necessarily cease.

When this action came before Judge Goodell of the Superior Court in San Francisco, it was decided in favor of the plaintiff and an order was made prohibiting the defendant, Pacific Health Corporation, from continuing its past activities with respect to the furnishing of medical and surgical services. Pacific Health Corporation thereupon appealed to the Supreme Court of California and the decision of that court was rendered on September 21, 1938. (See *People* vs. *Pacific Health Corporation*, 96 Cal. Dec. 349; also CALIFORNIA AND WESTERN MEDICINE, October, 1938, page 306.)

The facts involved were stated by the Supreme Court as follows:

Defendant Pacific Health Corporation, Inc., is a corporation organized under the general corporation law of the State of California, with its principal place of business in San Francisco. Upon application of persons in good health, the defendant issues a contract by the terms of which defendant undertakes to pay for services rendered by physicians, hospitals, ambulance and medical laboratories under certain circumstances, and the applicant pays the required sum or premium therefor. When a contract holder becomes sick or is injured, defendant advises him from whom these services are to be obtained, that is, the physician, hospital or ambulance available to him. After the services are rendered, defendant pays the charges. Defendant keeps a list of physicians and surgeons approved by it, and to obtain the benefits of the service the contract holders must, save as to emergency expenses not exceeding $50, accept a doctor from the list.

Defendant is a stock corporation, operated for profit. It advertises its services and solicits the public for purchase of its contracts, paying commissions to its soliciting agents. The money collected from contract holders is paid into the general fund, and this, together with the capital and surplus, is invested. The charges for medical services are paid out of the general fund and income from investments.

The Court then stated that it adhered to the established doctrine that a corporation may not engage in the practice of such professions as law, medicine or dentistry. Next, it applied the above stated facts to the rule announced and reached the conclusion that the activities of the Pacific Health Corporation were, in effect, corporate practice of medicine and hence were unlawful.

During the course of its opinion the Court mentioned two contentions that had been made by counsel for the Pacific Health Corporation. One of these was that the physicians secured by Pacific Health Corporation were not employees of it, but were independent contractors because they were paid on a fee basis rather than a salary. The other contention was that a decision against the Pacific Health Corporation would outlaw all religious, charitable, fraternal and employee organizations now rendering medical care in this state through physicians and surgeons.

With respect to the independent contractor assertion, the Supreme Court held as follows:

We are unable to agree that the policy of the law may be circumvented by technical distinction in the manner in which the doctors are engaged, designated or compensated by the corporation. The evils of divided loyalty and impaired confidence would seem to be equally present whether the doctor received benefits from the corporation in the form of salary or fees. And freedom of choice is destroyed and the elements of solicitation of medical business and lay control of the profession are present whenever the corporation seeks such business from the general public and turns it over to a special group of doctors.

It is thus to be noted that the California Supreme Court has squarely held that any restriction of freedom of choice of physicians and surgeons by use of the corporate mechanism violates a fundamental public policy of the state and is, therefore, unlawful.

In answering the corporation's assertions with respect to fraternal, religious, charitable and employee organizations, the Court first pointed out that such organizations were not before the court and then expressed the opinion that there is a fundamental distinction between an ordinary private profit-seeking corporation and the type of organization mentioned. In the court's opinion the fundamental difference between fraternal, religious, charitable or employee associations organized for purposes other than profit and ordinary stock corporations is that:

The public is not solicited to purchase the medical services of a panel of doctors; and the doctors are not employed or used to make profit for stockholders. In almost every case the institution is organized as a nonprofit corporation or association. Such activities are not comparable to those of private corporations operated for profit and, since the principal evils attendant upon corporate practice of medicine spring from the conflict between the professional standards and obligations of the doctors and the profit motive of the corporation employer, it may well be concluded that the objections of policy do not apply to nonprofit institutions.

The Court concluded its opinion with a discussion of health insurance and group medicine. It stated, first, that if the rule against corporate practice of medicine is to be changed, such change must come from the legislature and not the courts. It then stated that even if some form of health insurance or group medicine is desirable, it is possible to bring adequate medical service to the general public and at the same time protect both the profession and the public from the evils of corporate practice. The Court used as an illustration of its statement the health service system recently adopted by the employees of the city and county of San Francisco, under which all physicians practicing in San Francisco are *entitled* to render professional services to city employees, subject only to compliance with such rules and regulations of the health service board as are of a reasonable nature and acceptance of uniform rates of compensation.

Three of the seven justices dissented from the opinion of the Court. The dissenting opinion was based upon the proposition that " a corporation or a layman may lawfully employ a doctor to care for its patrons or members." In support of this proposition, cases from Nebraska and Missouri were cited. The dissenting justices also were of the opinion that *Pacific Employers' Insurance Co.* vs. *Carpenter, supra,* and *Benjamin Franklin Life Assurance Co.* vs. *Mitchell, supra,* should be overruled.

It should be observed that the *legislature* has forbidden corporate practice of medicine (Business and Professional Code, Sections 2006, 2007, and 2008) and that the Nebraska and Missouri cases relied upon by the dissenting justices are contrary to express California statutes as well as California judicial decisions.

Analyzing the decisions of the District Court of Appeal and the Supreme Court, it may now be concluded that in California the law with respect to corporate practice of medicine is as follows:

1. A corporation organized for profit or having stockholders may not engage in the practice of medicine or surgery.

2. Any attempt by such a corporation to restrict freedom of choice of physicians or to solicit contracts with persons who may become patients of physicians selected by the corporation, constitutes in effect the corporate practice of medicine and surgery and is forbidden.

3. Corporate practice is unlawful even though the corporation's shareholders or other proprietors may be physicians.

4. Nonprofit corporations (organized under Civil Code, Sections 593 *et seq.*) or associations furnishing the services of physicians and surgeons to employees of a common employer or furnishing medical services as a part of a religious or fraternal or charitable endeavor are probably not violating Rule 1 above (each enterprise will have to stand or fall according to its particular circumstances); and

5. Any change in the law, with respect to corporate practice of medicine and surgery desired by any special interests, must be sought from the legislature and not the courts.